

RESTRICTIVE COVENANT TERMINATION REVIEW SHEET

CASE: C14-01-0038(RCT)
Dabney Horne House

P.C. DATE: January 28, 2014
January 14, 2014

ADDRESS: 507 W. 23rd Street

AREA: 0.116 Acres

OWNER: University Cooperative Society (George Mitchell)

AGENT: Mike McHone Real Estate (Mike McHone)

NEIGHBORHOOD PLAN AREA: Central Austin Combined (UNO)

DESIRED DEVELOPMENT ZONE: Yes

WATERSHED: Shoal Creek

SCENIC ROADWAY: No

CAPITOL VIEW CORRIDOR: No

TIA: N/A

SUMMARY STAFF RECOMMENDATION:

Pending

HISTORIC LANDMARK COMMISSION RECOMMENDATION:

January 27, 2014:

PLANNING COMMISSION RECOMMENDATION:

January 14, 2014: *POSTPONEMENT REQUEST BY STAFF, APPROVED ON CONSENT, (8-0)*
[HERNANDEZ- 1ST, STEVENS- 2ND; HATFIELD- ABSENT]

ISSUES:

This restrictive covenant termination request (RCT) is related to two other current items: an appeal of a certificate of appropriateness (City File # C14H-1989-0010), and a rezoning request (City File # C14-2014-0148). These three items should be considered together.

Since the previous Planning Commission meeting, City of Austin Law Department has determined that the certificate of appropriateness has been approved, in accordance with Section 25-2-213 of the Land Development Code.

DEPARTMENT COMMENTS:

The subject property is located on the southeast corner of 23rd Street and Nueces Street and is developed with the Dabney-Horne House. Please refer to Exhibits A and B (Zoning Map and Aerial View).

The Applicant proposes relocating the Dabney Horne house within the subject property, adjusting its location to make development of the remainder of the property more feasible. The house would not be removed from the site. The restrictive covenant (RC) states, "The [Dabney-Horne] home existing on the Property on the date of the execution of this restrictive covenant shall be retained on the Property." Please refer to Exhibit C (Restrictive Covenant).

Since the language of unclear if this RC would allow relocation within the property, the Applicant proposes terminating the RC, while relocating the house to a portion of the property that has the protections of GO-CO-NP-H zoning. Please refer to Exhibit D (Relocation within Site Exhibit).

The subject property was rezoned in 1991 from MF-4 to GO-CO. A historic designation was not granted concurrent with that rezoning, so the City Council required the above-referenced restrictive covenant (RC) be placed on the property to protect the Dabney Horne home. The historic zoning designation was added later, making the RC redundant.

Staff has received correspondence in opposition to the Applicant's rezoning request. Please refer to Exhibit E (Correspondence).

EXISTING ZONING AND LAND USES:

| | ZONING | LAND USES |
|--------------|-------------------------------|--|
| <i>Site</i> | GO-CO-H-NP | Administrative office |
| <i>North</i> | CS-MU-NP, MF-4-NP, MF-4-CO-NP | Administrative office, Multifamily |
| <i>South</i> | GO-NP, MF-4-NP | Parking lot, Multifamily |
| <i>East</i> | CS-NP | Parking garage, Professional office |
| <i>West</i> | MF-4-NP, MF-4-H-NP | Single family, Duplex, Multifamily residential |

RELATED CASE NUMBERS:

C14-91-0038: Request: From MF-4 to GO. PC: To grant GO, General Office, subject to the retention of the existing Dabney-Horne House and a maximum height of 40 feet.

CC: 7/11/91- 1st Reading: Urdy- 1st, Larson's 2nd, (6-0-1) (Garcia off dias).

8/1/91-: Approved 2nd/3rd readings: Reynolds- 1st, Epstein- 2nd, (7-0), with conditions imposed by Council incorporated into a Conditional Overlay and Restrictive Covenant. (GO-CO)

ABUTTING STREETS:

| Name | ROW | Pavement | Class | Sidewalk | Bus Route | Bike Route |
|----------------|------------|-----------------|--------------|-----------------|------------------|-------------------|
| W. 23rd Street | 60 | 22 | Collector | Yes | No | No |
| Nueces Street | 60 | 22 | Collector | Yes | No | Yes |

SCHOOLS:

Bryker Woods Elementary School

O Henry Middle School

Austin High School

NEIGHBORHOOD ORGANIZATIONS:

Austin Neighborhoods Council

Central Austin Community Development Corporation

Central Austin Neighborhood Plan Area Committee

Preservation Austin

University Area Partners

CITY COUNCIL DATE & ACTION:

February 13, 2013:

ORDINANCE READINGS: 1st 2nd 3rd **ORDINANCE NUMBER:**

CASE MANAGER: Heather Chaffin
e-mail: heather.chaffin@austintexas.gov

PHONE: 974-2122



DOC. NO.
91077601

00004743387

Zoning Case No. C14-91-0038

RESTRICTIVE COVENANT

OWNER: UNIVERSITY COOPERATIVE SOCIETY, INC., a Texas corporation

ADDRESS: 2246 Guadalupe Street, Austin, Texas, 78705.
Attn: George Mitchell, President.

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

PROPERTY: Tract 1: North 9 foot tract of land out of Lot 14, Outlot 34, Division D, Louis Horst Subdivision, said North 9 foot tract of land being that same tract of land conveyed to University Cooperative Society, Inc., a Texas corporation, and described in the deed recorded in Volume 4420, at Page 2060, of the Deed Records of Travis County, Texas, said deed being attached as "Exhibit A" and incorporated herein for all purposes.

Tract 2: Lot 13, Outlot 34, Division D, Louis Horst Subdivision, a subdivision in the City of Austin, Travis County, Texas, according to the map or plat of record in Book Z, Page 613, of the Plat Records of Travis County, Texas.

WHEREAS, the Owner of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions as conditions of zoning for the Property;

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its successors and assigns.

1. The [Dabney-Horne] home existing on the Property on the date of the execution of this restrictive covenant shall be retained on the Property.
2. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.
3. If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.
4. If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
5. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property at the time of such modification, amendment or termination.

11514 0506

REAL PROPERTY RECORDS
Travis County, Texas

COAINED

All citations to the Austin City Code shall refer to the Austin City Code of 1981, as amended from time to time, unless otherwise specified. When the context requires, singular nouns and pronouns include the plural.

UNIVERSITY COOPERATIVE SOCIETY, INC.,
a Texas corporation

BY: George Mitchell
George Mitchell, President

Date: July 23, 1991.

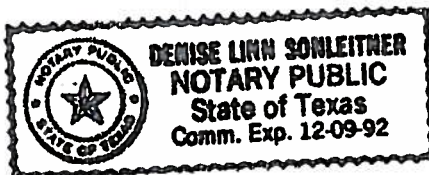
THE STATE OF TEXAS
COUNTY OF TRAVIS

§
§

This instrument was acknowledged before me on this the 23rd day of July, 1991, by George Mitchell, President of UNIVERSITY COOPERATIVE SOCIETY, INC., a Texas corporation, on behalf of said corporation.

Denise Linn Sonleithner
Notary Public Signature

Type or Print Name of Notary
My Commission Expires: _____



After Recording, Please Return to:
City of Austin
Department of Law
P. O. Box 1088
Austin, Texas 78767
Attention: Joe Jimenez, Legal Assistant

WARRANTY DEED

THE STATE OF TEXAS |
COUNTY OF TRAVIS |

KNOW ALL MEN BY THESE PRESENTS:

That, for a good and valuable consideration to me in hand paid by University Cooperative Society, Inc., the receipt of all of which is hereby acknowledged, I, the undersigned, J. BURLESON SMITH, INDIVIDUALLY AND AS INDEPENDENT EXECUTOR OF THE ESTATE OF RUBY C. SMITH, DECEASED, of Bexar County, Texas, have granted, sold and conveyed and by these presents do grant, sell and convey unto the said UNIVERSITY COOPERATIVE SOCIETY, INC., a Texas corporation of Travis County, Texas, its successors and assigns, the following described premises lying and being situated in Travis County, Texas, to-wit:

Lot No. Thirteen (13) and North Nine (9) feet of Lot No. Fourteen (14), HORST ADDITION, Outlot Thirty-four (34), Division "D", an Addition in the City of Austin, Travis County, Texas, according to the map or plat thereof, recorded in Plat Book 2, Pages 594, and 613, Plat Records of Travis County, Texas.

TO HAVE AND TO HOLD the said premises, together with all rights and appurtenances thereunto in anywise appertaining, unto the said University Cooperative Society, Inc., its successors and assigns, forever. For the same consideration, I, the undersigned, J. Burleson Smith, Independent Executor of the Estate of Ruby C. Smith, Deceased, do covenant and agree that the Estate of Ruby C. Smith, Deceased, will warrant and forever defend title to the said premises against all persons whomsoever lawfully claiming or to claim the same or any part thereof.

The grant hereof is subject to all restrictive covenants, if any, of record in Travis County, Texas, affecting the said premises or any part thereof.

REAL PROPERTY RECORDS
Travis County, Texas

11514 0508

DEED RECORDS

1120 2000

"EXHIBIT A" - Page 1 of 3

Possession of the said premises shall be delivered contemporaneously with the delivery hereof.

EXECUTED this 26th day of September, 1972.

J. Burleson Smith
J. Burleson Smith, Individually
and as Independent Executor of
the Estate of Ruby C. Smith,
Deceased.

THE STATE OF TEXAS
COUNTY OF ^{Texas} ~~DEKAR~~

BEFORE ME, the undersigned authority, on this day personally appeared J. Burleson Smith, Independent Executor of the Estate and under the Will of Ruby C. Smith, Deceased, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office on this the 29th day of September, A.D., 1972.

Notary Public in and for ~~State~~
County, Texas. *Texas*

NOTARY SEAL

STATE OF TEXAS COUNTY OF TRAVIS

I, the undersigned, Clerk of the Court, do hereby certify that the within and foregoing was filed on this date at the County Clerk's Office at Austin, Texas, and was duly recorded, in the Volume containing the same in the Record of Deeds of Travis County, Texas, as stated herein by me, on

OCT 4 1972

CCNY CLIP
HARRIS COUNTY, TEXAS

~~FILED~~

~~OCT 4 9 13 AM '72~~

-2-

11514

0509

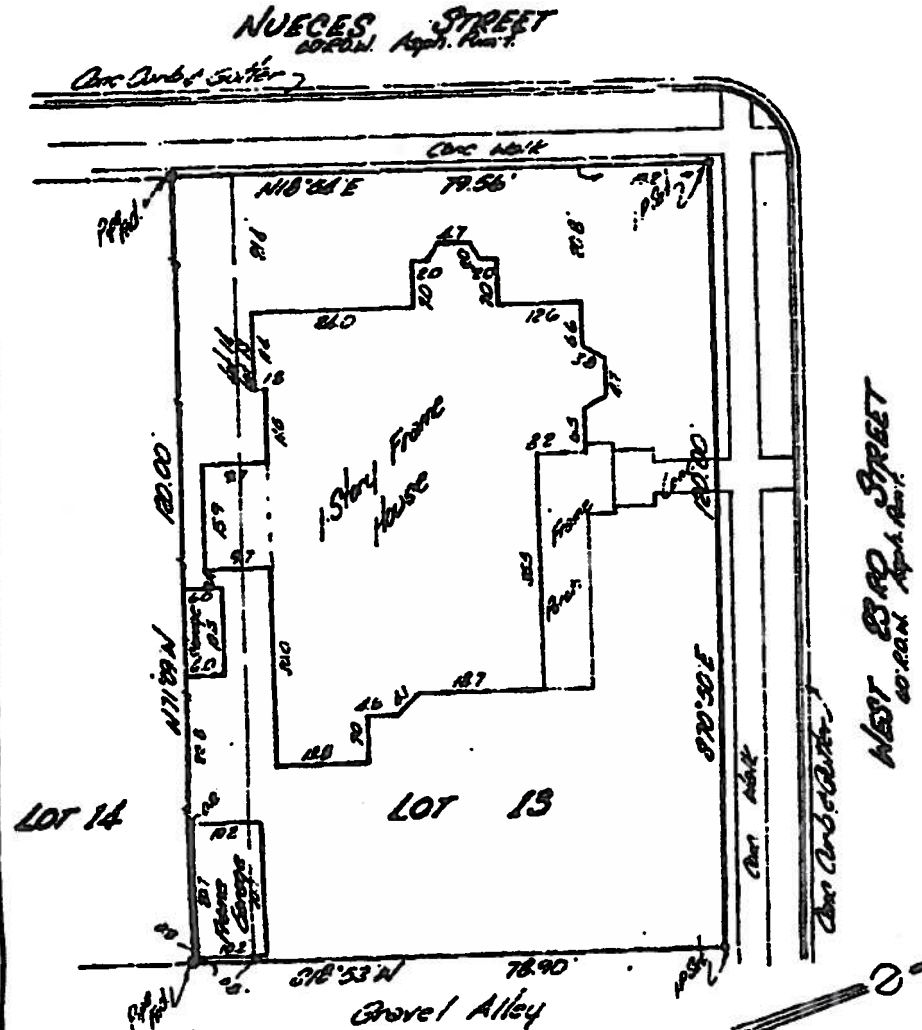
REAL PROPERTY RECORDS
Travis County, Texas

~~1-20-2018~~

"EXHIBIT A" - Page 2 of 3

SURVEY PLAT

TO ALL PARTIES INTERESTED IN PREMISES SURVEYED:—
 This is to certify that I have, this date, made a careful and accurate survey on the ground of property located at No. Nueces & W 23rd St. in the City of Austin, Texas being described as follows:
Lot No. 13 & N 9' of Lot 14 Block No. _____
of Louis Horst's Sub. _____ on addition to the City of Austin
 Texas, according to the final plat thereof recorded in Vol. 7 at page 594 of the Book
Public Records of Travis County, Texas. Ref. Ruby Smith Estate



The undersigned does hereby certify that this survey was this day made on the ground of the property legally described hereon and is correct, and that there are no discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, visible utility easements or roadways, except as shown hereon, and that said property has accreted to and from a dedicated roadway, except as shown hereon.

There are no encroachments upon this lot.

Date Sept. 20, 1971 Survey No. 18836 Work Order No. 16851

11514 0510

REAL PROPERTY RECORDS
 - Travis County, Texas

"EXHIBIT A" - Page 3 of 3

FILED

1991 SEP -4 PM 3:16

DANA DE BEAUFORT
COUNTY CLERK
TRAVIS COUNTY, TEXAS

STATE OF TEXAS

COUNTY OF TRAVIS

hereby certify that this instrument was FILED on
date and at the time stamped hereon by me; and
duly RECORDED, in the Volume and Page of the
and RECORDS of Travis County, Texas, on

SEP 4 1991



Dana DeBeaufort
COUNTY CLERK

TRAVIS COUNTY, TEXAS

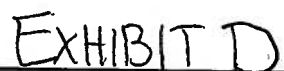
RECORDER'S MEMORANDUM - At the time of
recording this instrument was found to be inadequate
for the best photographic reproduction, because of
illegibility, carbon or photo copy, discolored paper,
etc. All blockouts, additions and changes were present
at the time the instrument was filed and recorded.

11514 0511

REAL PROPERTY RECORDS
Travis County, Texas

SCANNED

EXHIBIT D



Chaffin, Heather

EXHIBIT E

From: crocker sarah <sarah@sarahcrockerconsultants.com>
Sent: Tuesday, December 24, 2013 11:29 AM
To: Chaffin, Heather
Subject: C14-91-0038 (RCT) and C14-2013-0148
Attachments: Interested Party Correspondence Amended july 10.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Heather,

My client owns the property at 2212 and 2210 Nueces Street and they are opposed to termination of the 1991 Restrictive Covenant (C14-91-0038 (RCT) and the proposed zoning case (C14-2013-0148) to rezone the property fro GO-NP-H to GO-NP. I have attached the July 2, 2013 correspondence I transmitted to Greg Guernsey registering my client as an Interested Party.

I'd like to review the file after the first of the year , let me know what day would be best for you. Thanks Heather.

Sarah Crocker

9415 Burnet Rd

Suite 306

Austin Texas

78758

512-529-2511

SARAH PUTNAM CROCKER CROCKER CONSULTANTS

9415 Burnet Rd Suite 306

Austin Texas 78758

July 2, 2013

Mr. Greg Guernsey
Director
Planning and Development Review
City of Austin
Austin, Texas 78704

HAND-DELIVERED

RE: Catherine and George Cary/Gerhard-Schoch 1887 LLC/ Interested Party Status

Dear Mr. Guernsey,

I have been retained to represent Catherine and George Cary (Gerhard-Schoch 1887 LLC) with regard to the pending and anticipated future applications for the proposed development of a 170-foot residential tower at 507 W. 23rd Street, which is owned by the University Cooperative Society.

My clients own the historic Gerhard-Schoch house at 2212 Nueces and the adjacent duplex at 2010 Nueces. Due to their proximity to the subject tract, which is directly across the street, my clients meet the criteria for interested parties set forth in 25-1-131. Subsection A (2) (B) of Land Development Code.

Mike McHone, agent for the University Cooperative Society, has filed the following applications for 507 W. 23rd Street.

2013-005629 TP – A request to remove a 31" Heritage Pecan tree. The EV Board recommended disapproval on March 6, 2013. The Planning Commission voted to deny the permit in April.

2013-044283 PR- Request to relocate the historic Dabney-Horne house from it's present location to 1200-02 Cotton Street. The case was postponed at my request at the May meeting of the Historic Landmark Commission. On June 24, Mr. McHone requested a thirty-day postponement. The case is scheduled to appear on the August agenda.

All three properties are located in the Inner West Campus Subdistrict of the UNO Overlay, which was awarded the most permissive site development regulations to encourage the dense development envisioned for this corridor.

My clients were aware this area was in transition when they purchased the property. But it seemed reasonable to assume that the Dabney Horne house would remain in place due to the fact the house and the lot is zoned historic.

My primary concern is the applicant's apparent disregard for the Order of Process set forth in subsection (A) of 25-1-61, which states:

(A) An applicant must obtain approvals in the following order:

(1) Zoning;

(2) Subdivision;

(3) Site plan; and

(4) Building permit.

In 1989 the City initiated historic zoning case C14h-89-0010 over the objections of the owners, who were opposed to the historic designation until such time that they were able to secure the appropriate commercial zoning. The case was postponed indefinitely. In 1991 the University Cooperative Society filed C14-91-0038 to change the zoning at 507 W 23rd Street from MF-4 to GO.

On August 1, 1991 City Council approved a zoning change from MF4 to GO-CO in conjunction, with conditions. George Mitchell, President, of the University Cooperative Society was required to sign a Restrictive Covenant, which requires the Dabney-Horne home to be retained on the property, as it existed on August 1, 1991. The Restrictive Covenant which is recorded in Volume 11514 Page 0506 of the Real Property Records of Travis County can only be amended, modified or terminated by joint action of a majority of the City Council and the owners of the property at the time of such modification, amendment or termination.

Part 2 (1) of Ordinance NO. 910801-C states that..."No structure of any kind shall be built to a height greater than 40 feet above ground level on the Property."

On August 2, 1992 the Council approved the 1989 historic zoning case, which rezoned the Dabney-Horne house and the entire lot to GO-CO-H.

I realize the purpose of the UNO Overlay is to promote high-density redevelopment, particularly in the Inner West Campus Subdistrict. The only rule for redevelopment in the Inner West Campus Subdistrict is there aren't any rules. Every facet of the approval process was streamlined which has resulted in the construction of a number of student housing projects.

However, even 25-2-752 (Conflict of Law) can't trump the restrictions set forth in a recorded Restrictive Covenant or a zoning ordinance that restricts height on a property

because City Council actions aren't subject to this division of the Land Development Code. Neither is 25-1-61, the Order of Process. The current zoning for 507 W. 23rd Street is GO-CO-H-NP (C14-20120021) (Ordinance NO. 0408826-57)

On behalf of my client, I respectfully request that the application to relocate the Dabney-Horne house be withdrawn or suspended immediately and that staff take no further action or accept any application for the property at 507 W 23 St, until the applicant and owner have secured the following:

1. File a Zoning Amendment to terminate Restrictive Covenant (C14-91-0038) that requires the Dabney-Horne house to be retained on site.
2. File a Zoning Case to delete Part 2 (1), Condition Overlay District (Ordinance NO. 910801-C) Limit height of any structure to 40' above ground level.
3. File a Zoning Case to change the zoning from GO-CO-H- NP to GO-CO-NP to remove the historic designation from the entire lot.
4. A Neighborhood Plan Amendment may be required as per Article 16 of 25-1

My clients are not opposed to redevelopment or student housing. By this fall the Gerhard-Shock project will be an active participant in the UT student housing market.

The University Partners portion of the neighborhood plan recognized the need for density but noted there were a number of historically significant structures in this corridor that would and should survive. My clients have made a significant investment in the future by preserving a slice of Austin's history and they are equally committed to the survival of the Dabney-Horne house.

I look forward to hearing from you.

Sincerely,



Sarah Crocker

Authorized Agent

Gerard-Shock 1887 LLC

SARAH PUTNAM CROCKER CROCKER CONSULTANTS

9415 Burnet Rd Suite 306

Austin Texas 78758

July 2, 2013

Mr. Greg Guernsey
Director
Planning and Development Review
City of Austin
Austin, Texas 78704

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I look forward to hearing from you.

Sincerely,



Sarah Crocker

Authorized Agent

Gerard-Shock 1887 LLC

Council-Approved Documents

What is an Ordinance?

An **Ordinance** is a law that amends, repeals or supplements the Municipal Code, provides zoning specifications, or appropriates money for specific purposes.

An **Affidavit of Publication** serves as proof of publication that an ordinance was printed in the local newspaper as required by State law. It often includes a clipping of the actual notice as it appeared in the paper.

What is a Resolution?

A **Resolution** is a formal expression of a decision, opinion, policy or directive of the City, expressed in a document, and voted upon by the City Council.

What are Minutes?

Meeting **Minutes** are a summary of the items considered, discussed, and voted on at each regular Council meeting. In addition to minutes of the Austin City Council, the minutes of other bodies – including the Austin Housing Finance Corporation (AHFC) and the Mueller Local Government Corporation (MLGC) – are also available.

Council may also call **Special Meetings**, **Emergency Meetings**, or **Working Sessions** as needed. The Minutes for these meetings are also available.

What are Agendas and Agenda-Related Documents?

An **Agenda** provides a list of the matters to be discussed or voted on during a meeting. It is published before each Council meeting.

Agenda Changes and Corrections reflect changes made to a published Agenda. The Mayor reads this document into the record at each Council meeting.

An **Agenda Addendum** includes items added to an agenda after it is initially published.

Agenda Backup are supporting documents prepared by staff or outside consultants that are given to Council members regarding matters discussed or voted on during a meeting. Generally this documentation is made available in advance of the meeting. However, some documentation – **Agenda Late Backup** – is presented just before or during a Council meeting. Agenda Backup may include Recommendations for Council Action (RCA), drafts of proposed Resolutions or Ordinances, e-mails, reports, and other supporting documentation.

Agenda Questions and Answers are staff's responses to questions raised by the Council after they have reviewed the backup material for the items on an agenda.

Citizen Communications are supporting documents presented by citizens who are scheduled to speak to Council about items that may or may not be on an agenda.

What is a Contract Cover Sheet?

A **Contract Cover Sheet** identifies the vendor, the goods purchased, the term of a contract or agreement approved by the City Council and contact information for a key staff member. If anyone needs additional information about a contract, they can contact the person noted on the Cover Sheet.

What is a Restrictive Covenant?

Restrictive Covenants define limitations on the use of land and require Council approval. These restrictions are recorded in the deeds to real property and buyers agree to these limitations when they purchase the property.

A **Restrictive Covenant Amendment** records a change to the Restrictive Covenant and is approved by the City Council.

A **Restrictive Covenant Termination** is approved when the Council determines that limitations on the property are no longer needed.

[Close this Window](#)